

Briefing Paper

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AT WHOSE RISK?

Understanding States Parties' Implementation of Arms Trade Treaty Gender-based Violence Provisions

Anne-S everine Fabre, Gian Giezendanner, Paul Holtom, and Emilia Dungal



Credits and contributors

Editor:

Emilia Dungal

Production coordinator:

Olivia Denonville

Communications coordinator:

Lionel Kosirnik

Fact-checkers:

Mira Fey and Lionel Kosirnik

Copy-editor:

Alex Potter

Proofreader:

Stephanie Huitson

Design and layout:

Rick Jones

Print:

nbmedia, Geneva, Switzerland

About the authors

Anne-Séverine Fabre is an associate researcher at the Small Arms Survey. Her research focuses mainly on armed violence and arms trafficking. Before joining the Survey she worked in a Swiss penitentiary where she was involved in the management of inmates' sentences. She holds an MLaw in Criminology and Security from the University of Lausanne and a BA in International Relations from the University of Geneva.

Gian Giezendanner is a project officer at the Small Arms Survey and coordinates the Strengthening Implementation and Enforcement of the Arms Embargo on North Korea project. Before joining the Survey he worked as a DDR/RR Operations Officer in the UN Organization Stabilization Mission in the Democratic Republic of the Congo. He holds an LLM from the Geneva Academy of International Humanitarian Law and Human Rights and an MA in Conflict, Security, and Development Studies from Bradford University in the UK.

Paul Holtom is head of the Conventional Arms and Ammunition Programme at the UN Institute for Disarmament Research. From 2017 to 2021 he was a senior researcher at the Small Arms Survey and served as head of the Policy and Capacity Support Unit during 2020–21. In the period 2009–13 he was the director of the Stockholm International Peace Research Institute's Arms Transfers Programme, and served as adviser to the Group of Governmental Experts on the UN Register of Conventional Arms in 2013, 2016, and 2019. His main areas of research include conventional arms control instruments, arms transfer controls, weapons and ammunition management, UN arms embargoes, diversion and the illicit arms trade, transparency, and confidence-building mechanisms.

Emilia Dungal is the Small Arms Survey's communications coordinator and lead editor, managing all communications activities for the organization and ensuring proper quality control of outputs. She has worked on arms control since 2014, including at the UN Development Programme in the Western Balkans. She holds two BAs from Lund University—in Political Science and Mandarin—and an MA in Conflict, Security, and Development from the Department of War Studies at King's College London.

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Front cover photo

A Tigrayan rape victim who fled the conflict in her home region is photographed in eastern Sudan, near the country's border with Ethiopia. 20 March 2021. Source: Nariman El-Mofty/AP Photo



Schweizerische Eidgenossenschaft
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Overview

The Arms Trade Treaty (ATT) obliges states parties to conduct an assessment that considers the risk of exported conventional arms being used in serious acts of gender-based violence (GBV) before authorizing the export of such arms and their ammunition/munitions, parts, and components (UNGA, 2013, art. 7(4)). This Briefing Paper introduces some of the main considerations affecting, and challenges facing, such risk assessments, as well as national practices and experiences in doing so. The study unpacks the GBV-related provisions of the ATT, considers various implementation guidance documents, offers examples of states' implementation of these provisions, and concludes with a few policy observations.

Key findings

- At the time of finalizing this Briefing Paper, no ATT state party has publicly indicated that it has denied an export authorization because of a risk of the conventional arms being used to commit or facilitate serious acts of GBV. Indeed, most states parties reviewed for this study currently interpret ATT Article 7(4) in terms of the offences listed in Article 7(1)—though they also express interest in meeting their Article 7(4) obligations more explicitly.
- The existing recommended evidence base on GBV is often scattered and unstandardized; rarely providing the type of information required by export licensing officers to conduct assessments specifically focusing on the risk of exported conventional weapons being used to commit or facilitate serious acts of GBV.
- Although GBV is not currently addressed through stand-alone risk assessment tools, the ATT can still contribute to combating GBV if concerned stakeholders take steps to further define the topic in an arms trade context; encourage detailed on-the-ground reporting of serious GBV cases; and use ATT fora to exchange information on best practices in national settings.

Introduction

The ATT is not only the first legally binding agreement to establish rules to regulate international conventional arms transfers, but also the first treaty to directly 'recognize the link between gender-based violence (GBV) and the international arms trade' (WILPF, 2013, p. 1). Before ATT states parties authorize exports of conventional arms or their ammunition/munitions, parts, and components, Article 7(4) of the treaty obliges them to

take into account the risk of [exported] conventional arms . . . being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children (UNGA, 2013, art. 7(4)).¹

ATT states parties implement Article 7, including the GBV provisions, by conducting risk assessments that include research into a recipient state's record of GBV and violence against women and children to assess whether an export would constitute a violation of the relevant ATT provisions. These assessments are carried out by export licensing officers who are often operating with limited

Box 1 Key GBV-related CSP5 decisions

The fifth conference of states parties to the ATT (CSP5) held in August 2019 focused on the issues of gender and GBV, making several decisions to support the implementation of Article 7(4) and more broadly address GBV. The decisions:

- included a call to support research to improve stakeholders' understanding of gendered armed violence in the context of the ATT;
- encouraged the sharing of national interpretations and practices to effectively implement Article 7(4) with a view to developing a training guide; and
- updated the list of possible reference documents for conducting risk assessments to include NGO-produced materials on GBV and violence against women and children in the context of the ATT and UN and International Committee of the Red Cross (ICRC) materials on sexual violence in conflict settings (ATT Secretariat, 2019a, pp. 4, 50–51; 2019b, para. 22).

resources, lack clear guidelines, and do not have access to adequate evidence on which to base their work, including standardized and disaggregated data (WILPF, 2016, p. 54; Stimson Center and IHRC, 2021, p. 6).

CSP5 encouraged contributions to fill these gaps (see Box 1), and therefore this Briefing Paper sets out to increase stakeholders' understanding of ATT states parties' implementation of Article 7(4) by focusing on the work of these export licensing officers.

The study begins by contextualizing GBV as it is formulated in the ATT, then presents implementation guidance provided by civil society and describes open-source resources recommended by the Working Group on Effective Treaty Implementation (WGETI). Applying this knowledge, the authors then set out to find ATT-relevant GBV cases described in the recommended resources to review their utility for the work of export licensing officers. The penultimate section focuses on ATT states parties' implementation of the GBV-related articles of the treaty by analysing open-source reporting on the issue and presenting findings from key informant interviews with representatives of ten such states parties. The Briefing Paper then reflects on ways to leverage these findings in continued work to tackle GBV.

In terms of the focused approach used in the study, the paper limits its scope to GBV (and violence against women as a form of GBV) as it is understood in the ATT—that is, GBV committed by perpetrators using or facilitated by conventional arms (see the subsection below entitled 'Understanding "commit" and "facilitate" in the context of serious acts of GBV'). It does not analyse guidance, information sources, and implementation regarding issues relating to violence against children, because the study notes that equating women with children denotes the former as helpless, powerless, and without agency, while it also obstructs better understanding of violence against both these groups (Acheson and Gandenberge, 2015, p. 6). Violence against children is its own field of study, exists in its own legal framework, and therefore warrants its own research.

Similarly, although the Briefing Paper recognizes that states parties to the ATT may have GBV-related obligations under other treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (UNGA, 1979), this study focuses on how export licensing officers can and do work within the ATT framework specifically to make decisions on export authorizations.

Understanding GBV in the context of the ATT

States analyse the provisions of international treaties and apply them to their national practice to establish a framework within which practitioners can operate. For the ATT, this process lays down the guidelines according to which arms export licensing officers carry out arms export risk assessments. This section reviews key aspects of the GBV provisions in the ATT.

ATT GBV-related provisions

As it applies to export assessments, GBV is explicitly dealt with in ATT Article 7(4), but is also implicitly addressed in Article 6 on prohibitions and Article 11 on diversion.

If serious acts of GBV amount to the crimes listed in Article 6(3) or *would* contribute to them,² a state party is prohibited from authorizing the transfer of conventional arms, ammunition, parts, and components if it 'has knowledge at the time of the authorization' that the items would be used in the 'commission' of 'war crimes as defined by international agreements' to which the state is party. Article 6(3) thus sets a high evidentiary standard for the denial of an export, transit, or brokering licence and is applicable to only the most egregious criminal contexts (Clapham et al., 2016, para. 7.38).

Article 7(1)(b) requires states parties to assess the risk that exported items could be used to commit or facilitate serious acts of violence under the broader parameters of international humanitarian law (IHL) and international human rights law (IHRL). It should be noted, however, that this requirement only applies to export authorizations, and not to transit and brokering authorizations (Clapham et al., 2016, para. 7.38). Article 7(3) then specifies that if a state does see an overriding risk of the consequences listed in Article 7(1), it 'shall not authorize the export' (UNGA, 2013, art. 7(3)).

Article 7(4) is the core ATT provision dealing with GBV. It obliges states parties making export risk assessments to take into account whether the exported items could be used 'to commit or facilitate acts of gender-based violence or serious acts of violence against women and children' (UNGA, 2013, art. 7(4)), and in particular offences listed in Article 7(1)(b).³ Despite seemingly casting a broader net than Article 6(3), it is important to note that Article 7(4) only asks states to 'take into account' risks related to GBV, but does not stipulate that if these risks are identified, states 'shall not authorize the export', as specified in Article 7(3).

It has been argued that the obligation to assess the risk of diversion—which is set out in ATT Article 11—should also entail consideration of the potential risks listed in Article 7, including the risks of GBV (Clapham et al., 2016, para. 7.07).

Key terms and concepts relevant to the application of ATT Article 7(4)

This section gives a brief overview of efforts to provide guidance on the concept of GBV and related legal terms relevant to implementing Article 7(4). Because such concepts and terms are not the main focus of this study, this overview only touches on issues discussed in subsequent sections.

Understanding GBV in the context of the ATT

A large part of the challenge of understanding what is meant by GBV in the context of the ATT is that no internationally adopted or recognized legal definition of GBV exists (Vestner, 2019, pp. 5–6), nor even a universally agreed definition of the word 'gender'.

The Inter-Agency Standing Committee (IASC)⁴ defines GBV as 'an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (that is, gender) differences between males and females' (IASC, 2015, p. 5). This concept of gender is congruent with that of the Rome Statute, for example, which defines 'gender' as referring to 'the two sexes, male and female, within the context of society' (ICC, 2011, art. 7(3)). Additionally, the IASC umbrella term recognizes a broad range of acts of violence that could fall under its definition of GBV, such as rape and sexual assault (including conflict-related sexual violence); intimate partner and domestic violence; forced and early marriage; female genital cutting/mutilation; sex trafficking; and homicide, including femicide (see WHO, 2012).

General recommendation 19 of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) defines GBV as affecting women (CEDAW Committee, 1992, art. 1ff), but does provide a broad definition of 'violence', seeing it as discrimination that 'impairs or nullifies' women's rights to, among other things, life, equal protection, liberty and security of person, equality in the family, the highest attainable standard of physical and mental health, and just work conditions (CEDAW Committee, 1992, art. 7).

Though the above definitions draw on binary conceptions of gender, i.e. men and women, there are other entities encouraging broader concepts. For example, Reaching Critical Will—a programme of the Women’s International League for Peace and Freedom (WILPF)—defines GBV as

violence that is directed at a person based on her or his specific sex or gender role in society [and] is linked to the gendered identity of being a woman, man, intersex, transsexual, or transgendered (Acheson and Gandenberge, 2015, p. 5).

These authors recognize four categories of such violence, namely sexual, physical, emotional and psychological, and socioeconomic.

Other definitions specifically address the unequal power relations on which the act of GBV is based, or put more emphasis on the coercion inherent in such acts when listing examples (UNHCR, 2011, p. 6). The ICRC states that

what distinguishes GBV from any other form of violence is not necessarily the type of act itself . . . but that it is ‘gender-specific’ in that it is committed against an individual because of their sex and/or socially constructed gender role (ICRC, 2019, p. 4).

The UN High Commissioner for Human Rights’ 2011 report to the Human Rights Council states that

All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person (UNHCHR, 2011, para. 5).

Understanding ‘serious’ acts of GBV

In their risk assessments, states must take note of ‘serious’ acts of GBV. These acts must amount to ‘serious’ IHL or IHRL violations, acts of transnational organized crime, or acts of terrorism, as outlined in ATT Article 7(1) (Clapham et al., 2016, para. 7.99).

IHL defines ‘serious’ violations as acts that occur in situations of an international or non-international armed conflict and some situations of occupation, irrespective of the legitimacy of the cause of the belligerent party or parties (ICRC, 2012; n.d., art. 2; Sassòli, 2007).

The prevalence of sexual violence in conflict or post-conflict settings has led some organizations to prefer the term ‘sexual and gender-based violence’ when referring to such serious violations (UNHCR, 2011), and sexual violence is commonly recognized as one type of GBV (IASC, 2015, p. 322). Thus, several specific understandings of GBV are relevant to the application of both ATT Article 6(3) and Article 7(1).

In contrast, less clearly defined are ‘serious’ violations of IHRL, which is a body of law that provides protection for all human beings in a much broader set of situations than those covered by IHL, especially in non-conflict settings (Clapham et al., 2016, para. 7.50). While interpretations vary and states parties might have different understandings of the concept of GBV, their obligation under the ATT to conduct risk assessments remains intact and unaffected by such disparities in their interpretations and understandings of GBV (ICRC, 2019, p. 2; Vestner, 2019, pp. 5–6).

Understanding ‘commit’ and ‘facilitate’ in the context of serious acts of GBV

While ‘commit’ is fairly straightforward as a concept, ‘facilitate’ is more vague in its possible meaning. Weapons used to ‘facilitate’ serious acts of GBV may be ‘one or more steps removed from the actual violation’, meaning that risk assessments should consider a much broader range of potential acts that might prevent the authorization of an arms export (Clapham et al., 2016, para. 7.35). It has been argued that the ATT’s object and purpose as contained in Article 1⁵ supports this wide interpretation (Control Arms Secretariat and IHRC, 2019, p. 6).

With regard to serious acts of GBV, it is important to note that ‘facilitation’ needs to contribute significantly to the illegal act, ‘even if the assistance only contributed in a minor way to the actual harm suffered’ (Clapham et al., 2016, para. 7.37). Possible situations of ‘facilitation’ include using conventional arms to round people up for subsequent execution or to guard arbitrarily detained people, and in general situations of detention, in which sexual violence has been found to be especially prevalent (Clapham et al., 2016, para. 7.35). In other situations the harm caused by the act can be exacerbated by the presence of conventional weapons in the hands of the perpetrator(s) or can embolden the latter and contribute to the subduing of the victim (Control Arms Secretariat, 2019, p. 6). Thus, in some scenarios the weapons may be ‘only an incidental factor in the commission of

the primary act, and may have contributed only to a minor degree, if at all, to the injury suffered’ (Clapham et al., 2016, para. 7.36).

Understanding the notion of ‘overriding risk’

The notion of ‘overriding risk’ and its legal interpretation is a ‘contested and contentious’ aspect of ATT Article 7 (Clapham et al., 2016, para. 7.17). Its exact meaning neither is self-evident, nor is it an established concept in international law (Clapham et al., 2016, para. 7.91). The controversy around the notion mostly stems from the fact that the ‘expected positive effects of an arms transfer . . . may outweigh their possible misuses’ in the form of ‘serious violations of IHL or IHRL or certain terrorist acts’ (Clapham et al., 2016, para. 7.93). The ICRC states that its interpretations of the term as meaning ‘clear’ or ‘substantial’ risk would be in accordance with the treaty’s object and purpose which is to reduce human suffering (ICRC, 2017, p. 36).

Vestner found that 35 out of the 58 states considered for his study had included the consideration of mitigation measures as part of their Article 7 risk assessments (Vestner, 2019, note 31). This interpretation has been highlighted as a third possible understanding of ‘overriding risk’, that is, that such risk exists under Article 7(1) when it cannot be mitigated under Article 7(2)⁶ (Control Arms Secretariat and IHRC, 2019, p. 10). Although both civil society organizations (CSOs) and the ICRC have given some guidance on possible examples of such measures, the treaty itself remains silent as to the exact characteristics that define them (ICRC, 2017, p. 38).

Reviewing implementation guidance

Understanding GBV in the context of the ATT can be challenging, as the previous section describes. To understand how states can nonetheless go about carrying out GBV-related risk assessments, this section looks at the resources available to export licensing officers, including both information sources and guidance documents.

Exploring civil society implementation guidance

Control Arms, the International Human Rights Clinic at Harvard Law School (IHRC),

the Stimson Center, and WILPF, to name a few, have published guidance on the implementation of ATT Article 7(4), including a list of serious acts of GBV, indicators for assessing the related risk, and potential sources of information from which to build risk assessments.

WILPF's guidance includes a detailed set of questions for conducting gender-sensitive risk assessments. These questions are designed to facilitate an assessment of the importing state's responses to serious incidents of GBV, the integration into domestic law of international standards to protect individuals from GBV, the training and overall accountability of security forces, and the state's capacity to ensure that the use of the arms will be consistent with IHL and IHRL (WILPF, 2013, p. 3; 2016, p. 7). Control Arms has constructed a four-stage approach to conducting effective risk assessments for implementing Article 7(4) GBV provisions (see Figure 1); this also includes the consideration of mitigation measures to reduce the risks listed in Article 7(1) (Control Arms Secretariat, 2018, p. 5). Similarly, the Stimson Center and IHRC have also drafted a series of questions that export licensing officers should ask their 'information sources' when conducting risk assessments, and explain how to apply the answers. These 'information sources' may be officials in a licensing officer's own government—for example, country-desk officers and embassy officials—or in some cases officials in intergovernmental organizations or allied governments (Stimson Center and IHRC, 2021, p. 3).⁷

In addition, CSOs have conducted workshops and training sessions on the implementation of GBV risk assessments. Control Arms and the Stimson Center each carried out such training sessions for export officials in Eastern Europe in 2019 and 2021, respectively (Control Arms, 2019; Stimson Center, n.d.). Materials that Control Arms and WILPF presented during CSP5 covered a wide range of important and serious acts of GBV; however, some of these went beyond what some states would consider 'serious' IHL and IHRL offences in their national interpretations. Furthermore, the kind of evidence that would be required for the acts that Control Arms and WILPF outlined in order to help a national export control authority make an informed decision can be scarce (Fabre, Giezendanner, and Holtom, 2021).

In addition, while NGOs tend to focus on general assessments of recipient countries' national statistics on GBV, states parties often emphasize the importance of reviewing specific incidents of GBV during the export licence decision-making process in order to ascertain the seriousness of a specific act, the perpetrator(s), and the weapon(s) used. States parties consulted for this study indicated that a mixture of these two approaches is commonly used. National-level data trends and patterns help to provide an overall picture of the types of risks to anticipate when exporting arms to a particular country. Simultaneously, a review of individual incidents can identify the particular risks posed by the proposed transfer by examining the record of the end user and the type(s) of weapons to be transferred

against risk assessment criteria. Often, NGO guidance focuses on country-level assessments, but is not suitable for an incident-based approach. The present study therefore focuses on the individual incident dimension of export control risk assessments.

Applying Working Group on Effective Treaty Implementation guidance

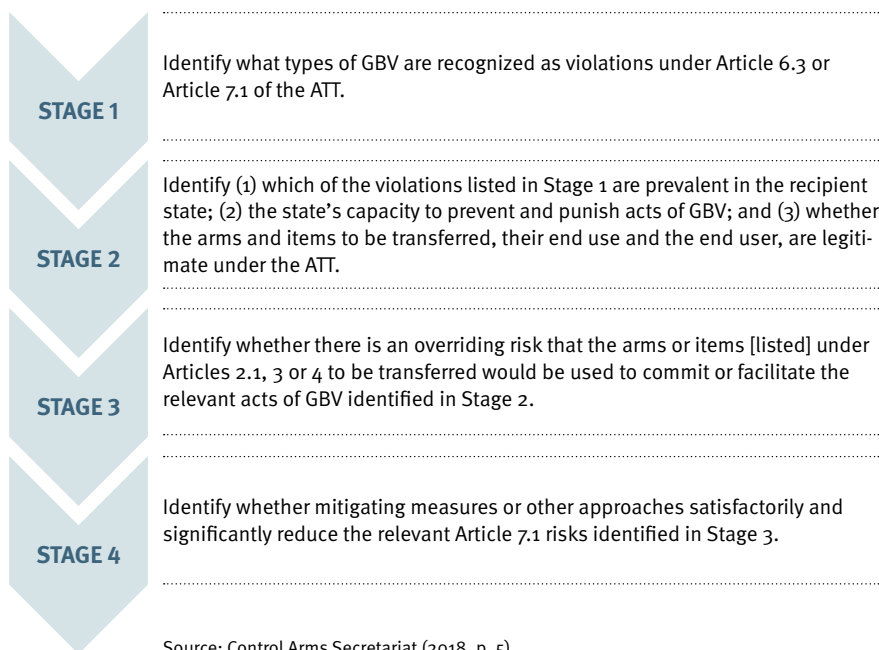
The ATT Working Group on Effective Treaty Implementation (WGETI) also recommends that export licensing officers use a variety of closed- and open-source documentation when carrying out their risk assessments. Suggested closed-source documentation includes, for example, reports from government agencies, embassies, and foreign governments. Recommended open-source documentation includes UN and NGO resources and materials, such as documentation produced by various UN agencies, missions, and panels of experts on arms embargoes covering GBV-specific, arms-related, and human rights-related topics, as well as a variety of other sources⁸ (ATT Secretariat, 2019a, Annex B, pp. 48–51).

This subsection seeks to gauge whether WGETI-recommended guidance and materials include sufficiently clear examples of patterns of GBV involving conventional arms to allow export licensing officers to determine the risk of such violence being committed or facilitated using the arms for which an export licence has been requested. To do this, the authors identified a selection of countries affected by conflict, or not affected by conflict, but by high homicide levels. They then applied the definitions and guidance outlined above to all available and relevant WGETI-recommended open-source material, including local media reports. As noted above, this study focuses on individual incidents, so, attempting to see the issue through the eyes of an export licensing officer, the authors perused the recommended source material in an attempt to identify incidents that satisfied all of the following three parameters:

1. The incident constituted a serious act of GBV.
2. The perpetrator(s) of the incident could be identified.
3. The type(s) of item(s) used to commit or facilitate the act could be identified.

This process not only enabled the review of the sources where licensing officers can find relevant information to implement Article 7(4) requirements,

Figure 1 Control Arms' four-stage approach to Article 7(4) implementation



but also highlighted the difficulty of finding cases that fulfilled all three parameters, despite the wealth of recommended materials.

The UN documents reviewed for this study seldom presented evidence that enabled the identification of all three parameters. Some contain accounts of serious acts of GBV and material on measures undertaken at the national level to address clear patterns of serious acts of GBV (see Box 2), but these very rarely include sufficient information on the use of conventional arms to commit or facilitate such acts. For example, some CEDAW Committee periodic reports include concluding observations on ATT-relevant GBV, but these usually take the form of broad recommendations for more scrutiny by the exporting state, and do not provide incident-specific information on weapons used to commit or facilitate GBV.⁹

Export licensing officers face time and budgetary constraints¹⁰ when conducting risk assessments, and are not always able to review multiple and scattered UN documents to find reliable evidence of the risk that exported conventional arms could be used to commit or facilitate serious acts of GBV. Therefore, a database like UN Women's Global Database on Violence against Women is a potentially useful one-stop source of reliable evidence for assessing whether arms exports are likely to be used in serious GBV incidents, because it collates relevant UN documents on GBV (UN Women, 2016); however, it does not seem to have been updated since 2016. UN Women's Virtual Knowledge Centre to End Violence Against

Women and Girls is intended for use in evidence-based programming, but lacks material to usefully inform ATT GBV risk assessments (UN Women, n.d.).

The NGO reports reviewed for this study would also not be sufficient to facilitate an incident-based approach to determining the risk of exported weapons being used to commit or facilitate serious acts of GBV. For instance, the WILPF has noted that 'reports on human rights and gender-based violence often fail to pay attention to the weapons involved, and there is no centralized repository of information', and calls for entities to take note of 'the links between weapons, armed actors, and GBV' (WILPF, 2016, p. 54).

However, international NGOs such as Amnesty International and Human Rights Watch (HRW) and local NGOs can and do provide relevant information on specific human rights abuses—including GBV—that can include all three parameters listed above (the act of GBV, the perpetrator(s), and the item(s) used) (see HRW, 2017). This type of evidence is heavily reliant on victim testimonies and can provide export licensing officers with valuable insights; but it also has limitations. To overcome the general lack of focus on GBV in monitoring and reporting by international NGOs, at the beginning of 2020 the WILPF launched its Gender and Disarmament Database, which compiles a wide range of publicly available resources (UN documents, NGO reports, policy briefs, multimedia reports, etc.) on topics that include ATT-related GBV (WILPF, 2020).

Looking at another, more general, WGETI-recommended source, this study

found that local media are a potentially rich source of information on serious acts of GBV in non-conflict settings and can be readily accessed online or, if not, then by embassies on the ground. An essential feature of local media is their access to up-to-date information. This can be one of the first sources of information that export control licensing officers consult when preparing an assessment. Caution should be exercised when relying on local media sources, however, because companies litigating against licence denials could contest the credibility and reliability of the information these sources provide. As a result, this study does not include cases noted in local media in the examples given in Table 1.

GBV and the data challenge

While relevant data is key to understanding, monitoring, and responding to violence, GBV is widely underreported and sporadically recorded, resulting in data gaps (WILPF, 2016, p. 12; Serrano, 2019, p. 30). Lack of access to justice, gender inequality, stigma, biased law enforcers, fear of reprisals, and secondary victimization are examples of the situations victims may face that contribute to limited reporting of the GBV they have suffered (HRW, 2017; Serrano, 2019; Jamaica, 2020). It is therefore not surprising that it is difficult to find data disaggregated by perpetrators and weapons used to commit or facilitate serious acts of GBV.

CSP5 encouraged states parties 'to support research that helps increase understanding of the gendered impact of armed violence in the context of the ATT' and to collect and make public 'gender disaggregated data on victims of armed violence and conflict' (ATT Secretariat, 2019b, pp. 5–6) (see Box 1). Spain's Observatory against Domestic and Gender-based Violence, Jamaica's Crime Observatory, and Argentina's National Register of Femicides, for example, are important efforts in this regard (Jamaica, 2020, para. 44; Argentina, n.d.; Spanish General Council of the Judiciary, n.d.). Yet more work is clearly required to systematically collect and present standardized data on serious acts of GBV committed or facilitated by conventional arms, especially regarding the latter. Although the situation is improving in terms of sex-disaggregated data on different forms of lethal violence¹¹—including that involving conventional arms—the same cannot be said for such data on injuries, and even less so where threats of violence are made using such weapons. Surveys, such as crime victimization surveys, are a useful tool to capture such data (Shaw, 2013; Alvazzi del Frate, Hideg, and LeBrun, 2020).

Box 2 States' response to GBV

As noted above, part of export licensing officers' risk assessments can include the consideration of factors that can mitigate the risk of conventional arms being used to commit or facilitate GBV. Therefore measures that member states take to prevent and respond to patterns of serious acts of GBV can provide important information to licensing officers. Examples of the kind of measures states take to address GBV committed by police officers, military personnel, and other armed security forces include:

- changing national legislation to include GBV offences and provide for appropriate sanctions;
- designing and implementing strategies to address GBV committed by police, armed forces, and security forces members;
- training military and criminal justice stakeholders to deal with incidents of GBV;
- creating a government agency, institution, or ombudsperson to combat and prosecute GBV; and
- developing information management systems or databases that, among other things, include GBV-related information (see UNSC, 2018; 2019; Honduras, 2020; Jamaica, 2020).

At the same time, while highlighting these various formal and institutional mechanisms, the reports referred to above also raise questions about the effective implementation and enforcement of such mechanisms, as well as the need to monitor and evaluate their impact.

Box 3 The GBVIMS's purpose and limitations

The purpose of the GBVIMS is

to harmonize data collection by GBV service providers in humanitarian settings and provide a simple system for GBV service providers to collect, store and analyse their data, and to enable the safe and ethical sharing of reported GBV incident data (GBVIMS, 2010, p. 1).

The GBVIMS consists of four major tools:

- Intake and Consent Forms (an intake form to report an incident and a consent form that 'upholds survivors' rights to control how information about their case is used and shared with other agencies or actors');
- GBV Classification Tool (a globally standardized system for classifying an incident);
- Incident Recorder (Microsoft Excel database for compiling and storing collected GBV data); and
- Information Sharing Protocol Template (which provides rules for sharing data on reported GBV cases with other humanitarian agencies) (GBVIMS, n.d.b).

The GBVIMS is 'not an appropriate tool for human rights monitoring, researchers, or surveyors' and does not show 'the actual prevalence of GBV in a given community' because 'it pertains only to **reported** incidents'. It is not publicly available (GBVIMS, n.d.a), nor does it contain information on the weapon(s) used in a particular incident. Yet it represents an approach for collecting data on incidents of GBV that has been implemented in 31 countries¹² and has protocols to protect those reporting GBV incidents, while ensuring that relevant data is made available to humanitarian organizations to facilitate their programming processes. It is worth considering whether the GBVIMS could be amended and made available to export control decision-makers to bridge the knowledge gap and provide evidence of the use of weapons in GBV incidents.

As noted above, the collection and presentation of statistical data on national GBV prevalence will not on their own fulfil the needs of those conducting incident-focused arms export risk assessments, because they need to examine concrete

cases. In this regard, efforts such as the incident-reporting tool developed as part of the Gender-Based Violence Information Management System (GBVIMS) could be useful (see Box 3).¹³ The GBVIMS incident-reporting form attempts to standardize

the collection of reports of GBV incidents, including information on the type of act and the perpetrator (for example, police officer, armed forces member, militia member); however, it lacks a dedicated space to record information on the type of weapons used, if any. Such information could therefore help to overcome current challenges facing export licensing officers attempting to systematically and clearly identify GBV perpetrators during export risk assessments.

Identifying the weapons used in GBV

A key difficulty with the recommended open sources—as the GBVIMS also notes—is that they do not clearly identify the types of conventional arms that are used to commit or facilitate GBV, which is an important piece of information for an incident-based risk assessment. This Briefing Paper's review of recommended open sources identified a range of weapons used to commit or facilitate GBV in conflict and non-conflict settings that are not covered by the ATT, such as bladed weapons (knives, machetes, etc.) and blunt objects (baseball bats, batons, hammers, etc.), and would therefore not warrant consideration for an ATT-based risk assessment. The few sources that do provide information on conventional arms used to commit or facilitate GBV often refer simply to a 'gun', and in a few cases mention a 'pistol' or 'rifle', but offer

Table 1 Examples of case studies found in WGETI-recommended open sources that include the three stated parameters

	GBV act	Perpetrator	Weapons used
UN reports	Rape of a man during his arrest in Venezuela in 2014	Defence and security actors: Bolivarian National Guard member	Rifle (barrel) (UNGA, 2020, para. 1589)
	Killing of women, boys, and girls in a hospital setting in the Central African Republic between 2017 and 2018	Armed groups	Gun/gunshot (UNSC, 2018, annex 8.5)
	Rape of women and girls in the Democratic Republic of the Congo between 2019 and 2020	Armed combatants affiliated to Nduma défense du Congo-Rénové; Collectif des mouvements pour le changement/Forces de défense du peuple; Forces démocratiques de libération du Rwanda; and Alliance des patriotes pour un Congo libre et souverain	Unclear (UNSC, 2020, p. 149) UNSC (2020, pp. 31–37) refers to rapes perpetrated by armed combatants and lists a wide range of conventional arms held by the groups in question, but since the report does not explicitly state that the combatants were armed with these types of weapons during the rapes, some may argue that the type of weapon(s) used was not identified.
NGO reports	Attempted rape and physical assault of a young woman in Cameroon in 2017	Defence and security actors: a police officer	Use of a pistol to threaten and then shoot the victim (WILPF, 2019, p. 1)
	Rape of a woman and the killing of her ten-year-old son in the Central African Republic in 2017	Armed group members: two Séléka Peuhl fighters	Firearms (implied by 'shot him in the side') (HRW, 2017, p. 66)

little more specificity (see Table 1). In several cases one could infer the use of a firearm from a reference to a ‘gunshot’ or ‘shot’ in the description of the GBV incident. While many reports link—or hint at the connection between—GBV and the proliferation of small arms in a particular country,¹⁴ details are too scarce to offer a proper analysis.

Table 1 lists some examples of GBV cases where all three parameters could be found in reports of incidents in countries facing either conflict or high homicide rates, as contained in the WGETI-recommended open sources. The research team reviewed this material to identify patterns of incidents in such settings. We found a range of acts of GBV, with cases of physical and sexual violence being the most prevalent.¹⁵ Although only a selection, Table 1 indicates that finding cases where all three parameters are included is far from straightforward.

Examples of the implementation of current export control assessment practices to identify the risk of GBV

To better understand how states are implementing risk assessments in reality, this section reviews a sample of national export control methodologies and identifies good practices for implementing ATT Article 7(4) and preventing exported conventional arms from being used in serious acts of GBV outside armed conflict.

Information on current implementation practices based on ATT initial reports, ATT-BAP, and written statements

Regarding states’ implementation of GBV-related ATT provisions, the Netherlands’ statement submitted during the CSP5 thematic session on gender and GBV provides a general insight into the situation in which states parties find themselves:

This is still work in progress in our daily export licensing practice in the Netherlands and we realize that we can and must do better. We look forward to the continued exchange of best practices on this topic enabling us to learn from other countries (Netherlands, 2019, p. 3).

To understand current implementation practices, this Briefing Paper offers a review of publicly available documents in which ATT states parties themselves have provided GBV-related information, namely states parties’ initial reports on measures to implement the treaty (as required by Article 13), ATT-Baseline Assessment Project (ATT-BAP)¹⁶ questionnaires, and written statements made by states parties during CSP5 and CSP6.

The template for the ATT initial report does not explicitly ask for information on the implementation of Article 7(4). Its question 3.D does ask states parties whether their ‘national [export] risk assessment procedure includes all the criteria described in Article 7(1)(a) and (b), and Article 7(4)’, however. Forty-five states parties responded ‘yes’ to this question or provided other information in their reports to indicate that this was the case.¹⁷

ATT-BAP question 7.C.ii explicitly asks respondents to indicate whether ‘acts of gender-based violence’ are considered prior to authorizing a transfer; 51 of the 63 respondents replied ‘yes’ (although this number includes states that are not ATT states parties).

While the majority of interventions in response to the CSP5 president’s draft decision on GBV and gender welcomed the call for an exchange of national practices to support the implementation of Article 7(4), Belgium and South Africa advised against ‘duplicating’ existing efforts to examine national practices or work being done in ‘other fora’ on ‘elaborating and exploring gender terms’ (Belgium, 2019; South Africa, 2019). That said, only Canada and Germany elaborated on how their respective national transfer control systems implement Article 7(4).¹⁸ Germany explained in its written statement to CSP5 that it implements Article 7(4) ‘by means of invoking the EU Common Position’s Criterion Two’ (Germany, 2019),¹⁹ while Canada stated in its initial report that the ATT risk assessment criteria contained in Articles 7(1) and 7(4) were enshrined in the country’s revised Export and Import Permits Act (Canada, 2020). In this new legislation Canada created a criterion for assessing serious acts of GBV and violence against women and children that is considered to be on an equal footing with the ATT Article 7(1) criteria and stipulates that an export or brokering permit cannot be issued if it would result in the commission or facilitation of serious acts of GBV (Canada, 2019, paras. 7.3, 7.4; 2020, 3.1). It is noteworthy that Canada not only applies Article 7(4) to risk assessments for exports, but also for brokering activities.

Information on current implementation practices based on KIIs

The research team conducted interviews with representatives of a sample of ten ATT states parties to identify national practices for implementing Article 7(4) and the challenges they face in doing so. These ten states were selected based on a combination of criteria, including their conventional and small arms exports, their geographical distribution, their experience with GBV issues as they relate to the ATT, and the availability of their representatives for interviews.²⁰ Because the representative of one state was interviewed twice, 11 key informant interviews (KIIs) were held with the ten state representatives—all anonymized for the purposes of this Briefing Paper. The KIIs addressed the following areas:

- changes made to national transfer control systems to implement Article 7(4);
- Article 7(4) risk assessment guidelines and mitigation measures;
- Article 7(4) risk assessment information sources; and
- focusing the application of Article 7(4) on small arms.

Changes made to national transfer control systems to implement Article 7(4)

One of the aims of the KIIs was to examine whether when implementing the ATT, states assessed the capacity of their existing system to adequately cover Article 7, or whether changes to the existing procedures were necessary. In response, one of the ten KII respondents noted that GBV was a ‘new concept’, and therefore a series of seminars were organized to familiarize their country’s licensing officers with the concept, while ‘civil society was also invited to share their conceptualizations of GBV’ (KII 4). Another respondent noted that most practitioners in their country tended to define GBV as sexual violence only, resulting in a limited interpretation of the concept. The same respondent also said that they would benefit from a booklet that better explained GBV (KII 10). Only one respondent provided a definition of ‘serious acts of gender-based violence or serious acts of violence against women and children’ used to fulfil Article 7(4) obligations. The definition was developed in connection with inputs for the WGETI subworking group on ATT Articles 6 and 7 and is used for risk assessment purposes:

Serious acts of gender-based violence or serious acts of violence against women and children in Article 7(4) [include] violence that is committed against an individual based on their gender identity, gender expression, or perceived gender (KII 9).

Two KII respondents indicated that their states were considering introducing a separate criterion in their risk assessments covering serious acts of GBV (KII 7; KII 10). At the time of the KIIs neither state had prepared a definition of GBV or a set of guidelines for use in risk assessments, nor had they rejected any licence applications on GBV-related grounds. Nevertheless, one of the respondents stated that ‘it is highly desirable for our country to get down to developing a specific criterion in order to make appropriate risk assessments’ (KII 10). The other said that preparations were under way to include

a stand-alone criterion for defining GBV in national legislation (KII 7). Yet another said they would like to see evidence of ‘specific cases of GBV that fulfil ATT Article 7(4), but which are not captured by Article 6 nor Article 7(1)’ (that is, in non-conflict situations) (KII 11).

Respondents from EU member states declared that their respective national transfer control systems had not been changed to implement Article 7(4), instead referring to the approach advocated in the EU Common Position (CoEU, 2019). This approach recommends that the risk of controlled items being used to commit or facilitate serious acts of GBV should be considered when assessing respect for human rights and IHL in the country of final destination as per Criterion Two (see also endnote 19) (CoEU, 2019, p. 54). Several EU member states also conduct such risk assessments for brokering licences and transit/transshipment authorizations. The EU Common Position

states that ‘the EU understanding of respect for human rights law and of international humanitarian law fully covers the acts referred to in Article 7(4) of the ATT’ (CoEU, 2019, p. 54). Thus, these respondents interpreted the implementation of ATT Article 7(4) in conjunction with the provisions in Article 7(1). As one explained:

As a practitioner, when you see something that would be an IHRL/IHL violation, the risk assessment would already end there. You do not need to go into the details of each violation and what provision it concerns (KII 11).

As a result, these ATT states parties were unable to identify a specific instance in recent years where a licence application was denied due to the circumstances listed in Article 7(4). EU member states share information on the reason for a



Demonstrators take part in a ‘March of Silence’ in Managua, Nicaragua, to protest the gender-based violence, especially femicides, in the country. 24 August 2017. Source: INTI OCON/AFP

licence denial in terms of EU Common Position criteria. The current denial notification system does not indicate whether a licence has been denied because of ATT Article 7(4) requirements. Nevertheless, several EU KII respondents noted that they were interested in learning whether new approaches to this issue could be adopted.

Article 7(4) risk assessment guidelines and mitigation measures

Only one respondent explained that their government had specific guidelines in place for assessing the risk of GBV that are separate from those used in risk assessments for violations of IHL and IHRL; however, the other responses can be summed up by the following statement:

The assessment is specific to the materiel being considered for export, that is, whether there is a risk of [a] specific piece of equipment being used to commit or facilitate serious acts of GBV. What matters is the actions/inactions of governments as recipients [of exports] (KII 4).

A respondent from a different country explained that its government had tasked NGOs with ‘preparing a checklist for GBV risks in countries that are not in conflict’ and that ‘this is exploratory work that goes beyond current [national] practices’ (KII 11).

The one respondent whose country had established a stand-alone criterion in its national legislation for serious acts of GBV emphasized that this change occurred after public consultations were conducted with civil society and industry representatives (KII 9). In addition, ‘rigorous training’ supported by subject matter experts was provided for export licensing officers who would be involved in evaluating the risk that exported items could be used to commit or facilitate serious acts of GBV. Specific questions now need to be addressed as part of this country’s risk assessment, for which ‘knowledgeable and credible sources of information’ across the national government can be utilized to ‘ascertain the risk of GBV of a proposed transaction’ (KII 9). These questions are contained in a dedicated section covering GBV in the country’s risk assessment form.

No respondent provided information about specific measures to mitigate the risk of exported arms being used to commit or facilitate serious acts of GBV. Several respondents were sceptical about the use of mitigation measures in general.

As an example, when considering measures taken in response to serious acts of GBV committed by security actors in fragile and conflict-affected countries (see Box 2), KII respondents felt that these constituted medium- to long-term approaches to criminalizing such acts and facilitating their systematic detection, investigation, and prosecution, and resulting convictions. Legislation represents merely a nominal indicator, while conviction rates can indicate that the legislation is enforced. Such information therefore only offers additional country-level data points, rather than mitigation measures that apply to specific transfers.

One respondent mentioned that they believed that one EU member state’s end-user certificate template contains a categorical assurance that exported items will not be used to commit or facilitate serious acts of GBV (KII 11). The research team has not yet identified this state.

Article 7(4) risk assessment information sources

All respondents referred to the use of embassies and overseas missions as sources of information for risk assessments, as well as various government agencies. At a minimum, respondents referred to the ministries, departments, or government agencies responsible for customs, defence, foreign affairs, intelligence, law enforcement, and trade as primary sources of information for risk assessments in general, and for conflict-related and human rights cases in particular.

Respondents from one state explained that Article 7(4) has contributed to the state’s export control agency increasing its assessment capabilities (KII 4; KII 5). Another respondent explained that information was now being exchanged between its national export control agency and the ‘departments of the Ministry of Foreign Affairs in charge of assessing respect for human rights, respect for women and children, disarmament, and non-proliferation’ (KII 6).

This exchange of information has led to the identification of countries that are considered to pose particular risks for arms exports. This list, which is updated every four months, currently identifies 22 ‘at-risk’ countries. Profiles are prepared for each of these countries with information gathered from not only government sources, but also international partners, open intelligence sources, and research institutes. Both embassies and international information exchange mechanisms such as the EU’s Working Party on Conventional Arms Export are consulted for further information if an application is

made for a licence to export arms to an at-risk country. While the respondent noted that this approach provides considerable accuracy and reliability, they added that it can take a great deal of time to gather all the relevant information (KII 6).

The only category of WGETI-recommended sources for conducting GBV risk assessments to which almost all respondents referred was that of NGO reports. In the main, Amnesty International and HRW were mentioned as reliable sources of information for human rights monitoring in general, but also for potential use in GBV risk assessments. One respondent stated that UN mission reports are ‘reviewed for relevant material on a regular basis’ (KII 7), while a respondent from another state emphasized that it can take a great deal of time to find relevant material in UN documents, although such material

is useful for providing evidence that will be used if a company disagrees with the decision to deny a licence using the other sources, that is, if we need to go to court over a decision we make, we need ‘solid’ information such as that provided in UN reports (KII 1).

Another respondent explained that while classified sources provide useful detailed information to inform export licensing decisions, credible open-source information can be very useful if a minister needs to defend their decision in a court of law (KII 9). In the respondent’s view, therefore, the main challenge lay in identifying relevant, credible, and regularly updated open-source materials for informing licensing decisions.

Inter-agency cooperation and information sharing are clearly critical for export risk assessments in general, and not just those specific to the GBV provisions in ATT Article 7(4). Yet such efforts require time and resources that are often not available. Even KII respondents from well-resourced states highlighted the challenge of conducting a systematic review of the extensive list of materials listed in the WGETI guidance as part of a risk assessment for a licence application. As noted above, if there is sufficient reliable information that exported conventional arms could be used to commit or facilitate serious violations of IHL or IHRL, the licensing officer will not explore further to determine if these violations specifically include acts of GBV. KII respondents also emphasized the challenge of trying to use non-standardized information in risk assessments that takes a great deal of time to review and does not provide relevant information. It therefore appears to

Box 4 A proposed export risk assessment indicator: Does an importing state consider GBV before authorizing civilian firearms possession?

During CSP5, Argentina and Peru explained how their national systems for regulating the possession and carrying of weapons within their national territories consider the risk of GBV before issuing or denying a permit or licence for the civilian possession of firearms. Argentina (2019, p. 3) explained that complaints/reports of gender-based or intra-family violence affect decisions to authorize civilian possession of ‘controlled materials’. Peru (2019) stated that a high percentage of licence applications for the civilian possession of firearms have been rejected because the applicants have committed violence against women or their families. Argentina also reported that measures are in place to restrict access to weapons for members of the security forces who are the subject of GBV-related complaints (Argentina, 2019).

Research undertaken by the Small Arms Survey on civilian possession regulations in Commonwealth countries found that Argentina and Peru are not alone in denying permits or licences for civilian possession to individuals found guilty of domestic violence offences or in cases where there is a history of violence against women and children (Colinas with Dungal and Holtom, 2020). To our knowledge, currently no source identifies all the countries that have such provisions in their legislation regulating civilian possession of firearms. Yet information about such legislation is available for most countries and could be used to inform risk assessments that seek to reduce the potential for firearms being used to commit non-conflict GBV and severe human rights abuses.

be essential to use a standardized format to collect and present reliable information to inform GBV risk assessments.

Focusing the application of Article 7(4) on small arms

The ATT focuses on conventional arms,²¹ and in discussing Article 7(4), KII respondents noted that their respective countries’ risk assessments apply to all items on their national control lists, which are mainly destined for government end users. At the same time, most respondents highlighted the heightened risk of exported small arms being misused to commit or facilitate serious acts of GBV. It was also noted that these items already receive particular scrutiny when assessing the risk of human rights abuses. As one respondent explained:

Diversion mainly concerns [small arms], which is the category most implicated in human rights violation[s] in general and gender-based violence in particular. Diversion of small arms fuels private and domestic violence, thus having a multiplier effect on GBV (KII 6).

Several respondents noted the challenge of conducting risk assessments for exports of firearms to non-state entities, in particular firearms dealers and private security companies (PSCs) (KII 1; KII 3; KII 6; KII 7). One respondent explained that the ultimate end user is not known in such cases and therefore the risk assessment has to abandon the incident-based approach and use ‘general information

on the country and the overall situation with regards to human rights abuses . . . including the human rights record of the police and levels of corruption’ (KII 1). Another respondent stated that before authorizing exports of firearms to arms dealers or PSCs, ‘we need evidence to show that these imports are authorized by the government in the importing state’ (KII 7). This respondent explained that if the firearms were eventually ‘used in relation to violence committed against women and children’ in individual cases, this would be ‘an issue of internal control for the concerned country’ (KII 7). The issue of whether states consider such risks in their licensing of civilian arms possession in their territories is beyond the scope of the ATT. Nevertheless, the treaty allows us to propose an indicator for use in export licensing risk assessments that could help to reduce the likelihood of exported firearms being misused to commit acts of GBV in non-conflict settings (see Box 4).

Final observations

Based on the review of implementation examples gathered from states’ reporting and the KIIs conducted for this study, it would appear that specific issues need further attention:

- the utility of the ATT to address GBV such as domestic violence and intimate partner violence;
- GBV expert community members as builders of an evidence base to support arms export decision-making; and

- a broader view of measures to mitigate the use of exported conventional arms to commit or facilitate serious acts of GBV.

The ATT as a tool to address the use of firearms in domestic and intimate partner violence

The existing approach to arms export control—especially in terms of firearms supplied to dealers, where the final end user is therefore unknown—does not adequately address armed domestic violence and intimate partner violence. Importing states can best address this type of GBV through their import control mechanisms and systems for regulating civilian possession of firearms.

While this issue is not a central aspect of the ATT, it could provide another indicator for export risk assessments that seek to go beyond the minimum requirements of Article 7(4). For example, to ensure that persons with a history of domestic and intimate partner violence do not acquire imported firearms, it would be helpful if export risk assessments included information on whether a destination country has pertinent legislation, regulations, or administrative procedures in place to prevent or mitigate such violence. At present no global database indicates which countries take such an approach, but research institutes, CSOs, or embassies could explore this issue. These entities could also provide additional information on whether such legal measures and procedures are adequately implemented in practice. Whichever entity addresses this issue, it should ensure that the information is standardized and easily accessible to those tasked with conducting risk assessments.

However, the ATT could continue to provide a forum in which states parties share information on national measures to prevent citizens who have a history of GBV offences from legally obtaining firearms.

GBV expert community members as builders of an evidence base to support arms export decision-making

To overcome the limitations of the current evidence base, a dialogue is needed between GBV experts on the ground and arms export licensing agencies. Such a dialogue would not only provide useful information on GBV concepts and contexts

for export licensing agencies; it would also enable GBV experts to better understand what type of information is required to inform arms export licensing decisions, and would thus help to prevent exported conventional arms from contributing to GBV.

One of this study's proposals is to consider integrating an 'arms component' into existing GBV monitoring tools such as the GBVIMS (see Box 3). This tool already contains a customizable question on the main occupation of the alleged perpetrator, with distinct categories for 'police', 'state military', 'non-state armed actor/rebel/militia', and 'security official'. It would be very useful to add both a question to the section on 'details of the incident' about whether a weapon was used or present and a simple system to categorize the type of weapon (pistol, rifle, machete, knife, etc.). This would also allow for the inclusion of other military items and arms covered by ATT Article 2(1) that could facilitate GBV (for example, armoured vehicles). Of course, this avenue could be explored with other tools for monitoring GBV. The key issue is to provide a systematic approach to the data collection process, and standardized and easily accessible ways of presenting its findings that can be used to carry out risk assessments.

Mitigating the risk of exported conventional arms being used to commit or facilitate serious acts of GBV

This study found a general scepticism regarding the effectiveness of measures to mitigate the risk that exported weapons could be used to perpetrate IHL and IHRL abuses, including GBV. Many ATT states parties, however, have indicated in their initial reports and CSP statements that end-user certificates (EUCs) are a useful 'mitigation measure' with regard to the implementation of Article 7. In this context, one could argue that Switzerland's EUC for 'war material' exports to government end users includes an assurance that implicitly covers Article 7(4), because it requires the end user to certify that 'these items will not be used against the civilian population in an offensive manner' (Switzerland, 2020).²² However, one could consider the utility of requiring such assurances to be more specific by including detailed descriptions of what measures will be undertaken to avoid such risks, for example, combating diversion, etc.

As noted above,²³ it appears that one ATT state party is looking to include an explicit assurance that exported conven-

tional arms will not be used to commit or facilitate serious acts of GBV. This aligns with a point made by the UN Institute for Disarmament Research in its study on end use(r) controls, namely that ATT states parties 'may seek to include assurances that recipients use the imported items . . . in accordance with Articles 6 and 7 of the ATT' (Holtom, Giezendanner, and Shiotani, 2015, p. 96). This mitigation measure is most effective when the exporting state can respond to and act on evidence provided by NGOs and other agencies operating in the importing country that indicates its non-compliance with such end-use provisions.

Nonetheless, the varied views on this topic suggest that the identification and follow-up of mitigation measures need further work, including consultations between states and civil society.

Conclusion

No ATT state party has provided information for this study—or to the *ATT Monitor Report 2019* (Control Arms Secretariat, 2019, p. 28) or any other public forum—indicating that it has denied an export authorization on the grounds of serious acts of GBV in the destination country. However, GBV acts may have been perceived as IHL or IHRL violations in cases where the latter were the bases for the denial of an export licence. Furthermore, exporting states will not authorise transfers to entities subject to UN arms embargoes, which includes actors for which incidents of armed GBV are well established. In future, states may reassess the way in which they provide information on licence denials; for example, Canada has suggested it could expand its reporting on cases that were specifically denied on the ground of GBV. This could prompt other ATT states parties to follow suit.

The discussions on implementing Article 7(4) and the decision to establish a diversion information exchange forum (ATT Secretariat, 2020, para. 40) suggest that a similar forum could be introduced to report licence denial notifications (Holtom and Bromley, 2011, p. 37). In such a forum ATT states parties could share information about licence denials to inform their implementation of Articles 6 and 7 in general, rather than Article 7(4) in particular.

Most of the representatives of ATT states parties interviewed for this paper indicated that they adopt a relatively narrow interpretation of Article 7(4) limited to offences listed in Article 7(1), particularly violations of IHL and IHRL. At the other end of the spectrum, several CSOs

consider Article 7(4) to include *all* forms of GBV. Between these two poles a few respondents are considering an additional criterion for implementing Article 7(4) in their existing export control framework, but it is unclear how this will be distinct from existing criteria that deal with IHL and IHRL violations. Thus, there seems to be an 'expectations gap' between, on the one hand, how states parties conduct transfer control risk assessments and the limits of what can be achieved with this particular government tool and, on the other hand, the hopes of CSOs that such controls can prevent arms flows to countries with high levels of reported or suspected GBV.

The ATT is the first legally binding agreement linking the international arms trade to GBV. Although this linkage is vital, there has been little practical application of this provision. Arms export licensing officers note that their understanding of the types of GBV that would lead to an export licence denial would already be covered under IHL or IHRL. In addition, the evidence base for sourcing the information necessary for such denials—namely specific GBV acts, the perpetrators, and the exported items used—is lacking, while GBV is notoriously underreported. ATT states parties and their export licensing officers therefore seem to be at an impasse. By attempting to further contextualize serious acts of GBV, however, to increase the extent and quality of reporting of such cases, and to use ATT forums to exchange information on best practices, states parties can better leverage the Article 7(4) provisions on GBV and thus do what these provisions are meant to do—reduce human suffering. ●

Abbreviations and acronyms

- ATT** Arms Trade Treaty
- ATT-BAP** ATT-Baseline Assessment Project
- CEDAW** Committee on the Elimination of Discrimination against Women
- CSO** Civil society organization
- CSP** Conference of states parties
- EUC** End-user certificate
- GBV** Gender-based violence
- GBVIMS** Gender-Based Violence Information Management System
- HRW** Human Rights Watch
- IASC** Inter-Agency Standing Committee
- ICRC** International Committee of the Red Cross
- IHL** International humanitarian law

IHRC International Human Rights Clinic at Harvard Law School
IHRL International human rights law
KII Key informant interview
NGO Non-governmental organization
PSC Private security company
UN United Nations
WGETI Working Group on Effective Treaty Implementation
WILPF Women’s International League for Peace and Freedom

Notes

- 1 For the full text of the ATT, see UNGA (2013).
- 2 In contrast to Article 7(4), which speaks to whether they *could* contribute to these crimes; see below.
- 3 The subsection entitled ‘Understanding “serious” acts of GBV’, below, provides examples of the types of GBV offences covered by Articles 6 and 7.
- 4 The IASC is a forum of UN and non-UN humanitarian partners founded in 1991 to strengthen humanitarian assistance.
- 5 Noting as one of its aims to ‘Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms’ (UNGA, 2013, art. 1).
- 6 Article 7(2) reads: ‘The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States’ (UNGA, 2013, art. 7).
- 7 It is also important to note that, within certain limits, Article 8(1) obliges arms-importing states that are parties to the treaty ‘to ensure that appropriate and relevant information is provided’ to assist the exporting state in its risk assessment (UNGA, 2013, art. 8(1)).
- 8 These recommended materials include, for example, reports by CEDAW, UN Panel of Experts on arms embargoes, UN country missions, the ICRC on sexual violence, the WILPF on GBV and the ATT, Amnesty International, and Control Arms.
- 9 For some examples, see OHCHR (n.d.).
- 10 Time constraints, as mentioned in WILPF (2016, pp. 22–23); and budgetary constraints, as mentioned in follow-up correspondence with key informant interview (KII) 9 respondent.
- 11 In this regard, the Small Arms Survey’s Global Violent Deaths database could be a useful starting point to get a sense of the numbers of and trends in sex-disaggregated violent deaths, including by firearms (Small Arms Survey, n.d.).
- 12 These countries are: Bangladesh, Burundi, Cameroon, Chad, Central African Republic, Colombia, Côte d’Ivoire, Democratic Republic of Congo, Ethiopia, Greece, Guinea, Haiti, Iraq, Jordan, Kenya, Lebanon, Liberia, Libya,

- Mali, Myanmar, Nepal, Niger, Nigeria, Pakistan, Philippines, Sierra Leone, South Sudan, Tanzania, Thailand, Turkey (regarding the cross-border provision of support to Syria), and Uganda (GBVIMS, n.d.c).
- 13 The GBVIMS is an inter-agency initiative overseen by a steering committee made up of representatives from the International Rescue Committee, the UN Refugee Agency, the UN Population Fund, UNICEF, and International Medical Corps.
- 14 For example, UNGA (2015, p. 9; 2019, para. 53).
- 15 The reviewed material makes little if any mention of intimate-partner or domestic violence, although it is understood that this accounts for a large proportion of GBV in the form of violence against women (UNODC, 2019).
- 16 The ATT-BAP seeks to provide clear guidance on the obligations contained in the treaty and to establish a baseline assessment of states’ abilities to implement it. For more information, see ATT-BAP (n.d.).
- 17 As of 30 October 2020 the ATT Secretariat had indicated on its website that 77 initial reports had been received, 62 of which were publicly available on the website (ATT Secretariat, n.d.).
- 18 New Zealand’s written statement for CSP6 emphasized that ‘states parties to the Treaty need to be assessing—as part of their standard export control decision-making process—any risks of gender-based violence’, but did not provide information on how such an assessment is conducted (New Zealand, 2019).
- 19 Criterion Two of the EU Council Common Position states that EU member states shall assess ‘the recipient country’s attitude towards relevant principles established by international human rights instruments [and] instruments of international humanitarian law’ and deny an export licence if there is a ‘clear risk’ that the exported items ‘might be used for internal repression’ or ‘might be used in the commission of serious violations of international humanitarian law’, and to ‘exercise special caution and vigilance in issuing licences . . . to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe’ (CoEU, 2019).
- 20 These states included five from Western Europe, two from Asia, two from Eastern Europe, and one from the Americas. These state parties participated with the understanding that their responses would remain anonymous.
- 21 Article 2 states that the ATT ‘shall apply to all conventional arms within the following categories: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large-calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons’ (UNGA, 2013, art. 2).
- 22 This approach is used for exports to authorized government end users, not private end users.
- 23 At the end of the section entitled ‘Article 7(4) risk assessment guidelines and mitigation measures’.

References

- Acheson, Ray and Mia Gandenberge. 2015. *Gender-based Violence and the Arms Trade Treaty*. Geneva: WILPF.
- Alvazzi del Frate, Anna, Gergely Hideg, and Emile LeBrun. 2020. *Gender Counts: Assessing Global Armed Violence Datasets for Gender Relevance*. Briefing Paper. Geneva: Small Arms Survey. March.
- Argentina. 2019. ‘Intervención delegación Argentina, Embajador Carlos Foradori: discusión temática sobre género y violencia basada en el género: V conferencia de estados partes del tratado de comercio de armas, ítem 4 agenda, lunes 26 de agosto (mañana).’
- . n.d. *Registro, sistematización y seguimiento de femicidios y homicidios agravados por el género—2019*. Buenos Aires: Ministry of Justice and Human Rights.
- ATT-BAP (Arms Trade Treaty-Baseline Assessment Project). n.d. Homepage.
- ATT (Arms Trade Treaty) Secretariat. 2019a. *ATT Working Group on Effective Treaty Implementation: Chair’s Draft Report to CSP5*. ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep of 26 July.
- . 2019b. *Final Report of the Fifth Conference of States Parties to the Arms Trade Treaty*. ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1 of 30 August.
- . 2020. *Final Report*. ATT/CSP6/2020/SEC/635/Conf.FinRep.Rev1 of 21 August.
- . n.d. ‘Initial Reports.’ Accessed 30 October 2020.
- Belgium. 2019. ‘Belgium: Agenda Item 6: Treaty Implementation: Arms Trade Treaty Fifth Conference of States Parties (Geneva, 26–30 August 2019).’
- Canada. 2019. Export and Import Permits Act (R.S.C., 1985, c. E-19).
- . 2020. *The Arms Trade Treaty: Reporting Template: Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with Article 13(1)*.
- CEDAW Committee (Committee on the Elimination of Discrimination against Women). 1992. ‘General Recommendation No. 19: Violence Against Women.’
- Clapham, Andrew, et al. 2016. *The Arms Trade Treaty: A Commentary*. Oxford: Oxford University Press.
- CoEU (Council of the European Union). 2019. *User’s Guide to Council Common Position 2008/944/CFSP (as Amended by Council Decision (CFSP) 2019/1560) Defining Common Rules Governing the Control of Exports of Military Technology and Equipment*. 12189/19 of 16 September.
- Colinas, Boris, with Emilia Dungal and Paul Holtom. 2020. ‘Gendered Firearms Regulations: Assessing the Risk of Gender-based Violence during Firearms Licence Applications.’ Small Arms Survey Blog. 2 April.
- Control Arms. 2019. ‘The First Training on the Implementation of the GBV Criteria Takes Place Eastern Europe.’ 20 May.
- Control Arms Secretariat. 2018. *How to Use the Arms Trade Treaty to Address Gender-based Violence*. Control Arms Practical Guide. New York: Control Arms Secretariat. August.

- 2019. *ATT Monitor Report 2019*. New York: Control Arms Secretariat.
- and IHRC (International Human Rights Clinic). 2019. *Interpreting the Arms Trade Treaty: International Human Rights Law and Gender-based Violence in Article 7 Risk Assessments*. April.
- Fabre, Anne-Séverine, Gian Giezendanner, and Paul Holtom. 2021. *Arms Export Risk Assessments for Gender-based Violence and Violence against Women and Children: How Do States Parties Implement Article 7(4) of the Arms Trade Treaty?* Unpublished background paper. Geneva: Small Arms Survey.
- GBVIMS (Gender-Based Violence Information Management System). 2010. 'Overview of the Gender Based Violence Information Management System (GBVIMS).'
- n.d.a. 'GBVIMS Benefits and Limitations.'
- n.d.b. 'GBVIMS Toolkit: A Snapshot.'
- n.d.c. 'Where is the GBVIMS?'
- Germany. 2019. 'German Statement on Sexual and Gender-based Violence: Geneva, 26 August 2019.'
- Holtom, Paul and Mark Bromley. 2011. *Implementing an Arms Trade Treaty: Lessons on Reporting and Monitoring from Existing Mechanisms*. Stockholm International Peace Research Institute (SIPRI) Policy Paper 28. Stockholm: SIPRI. July.
- Holtom, Paul, Hardy Giezendanner, and Himayu Shiotani. 2015. *Examining Options to Enhance Common Understanding and Strengthen End User and End User Control Systems to Address Conventional Arms Diversion*. Geneva: UN Institute for Disarmament Research Resources.
- Honduras. 2020. *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21*Honduras*. A/HRC/WG.6/36/HND/1 of 5 February.
- HRW (Human Rights Watch). 2017. *They Said We Are Their Slaves: Sexual Violence by Armed Groups in the Central African Republic*.
- IASC (Inter-Agency Standing Committee). 2015. *Guidelines for Integrating Gender-based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery*.
- ICC (International Criminal Court). 2011. Rome Statute of the International Criminal Court. The Hague: ICC.
- ICRC (International Committee of the Red Cross). 2012. 'What Are "Serious Violations of International Humanitarian Law"?' Explanatory Note.
- 2017. *Understanding the Arms Trade Treaty from a Humanitarian Perspective*. Geneva: ICRC. September.
- 2019. *International Humanitarian Law and Gender-based Violence in the Context of the Arms Trade Treaty*. April.
- n.d. Geneva Conventions of 12 August 1949 and Additional Protocols, and Their Commentaries.
- Jamaica. 2020. *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21*. A/HRC/WG.6/36/JAM/1 of 18 August.
- Netherlands. 2019. 'Statement of the Netherlands Delivered by Sabine Visser, Deputy Coordinator Division Arms Export Controls, Ministry of Foreign Affairs of the Kingdom of the Netherlands at Fifth Conference of States Parties to the Arms Trade Treaty Thematic Discussion on Gender and Gender-based Violence.' Geneva, 26 August.
- New Zealand. 2019. 'Statement by H.E. Dell Higgie Ambassador for Disarmament: Fifth Conference of States Parties to the Arms Trade Treaty: Thematic Discussion on Gender and Gender-based Violence, 26 September 2019.'
- OHCHR (Office of the High Commissioner for Human Rights). n.d. UN Treaty Body Database: CEDAW. Accessed 25 January 2022.
- Peru. 2019. *Quinta Conferencia de los Estados Parte del Tratado sobre el Comercio de Armas (TCA): Intervención del Perú, Punto de la agenda 5 (General Debate), 26 de agosto de 2019*.
- Sassòli, Marco. 2007. 'Lus ad bellum and lus in bello: The Separation between the Legality of the Use of Force and Humanitarian Rules to Be Respected in Warfare: Crucial or Outdated?' In Michael N. Schmitt and Jelena Pejic, eds. *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein*. Leiden: M. Nijhoff, pp. 241–64.
- Serrano, Lorraine Andaya. 2019. *Integrating Gender in Project Design and Monitoring for the Security and Justice Sector*. Gender and Security Toolkit: Tool 15. Geneva: DCAF, OSCE/ODIHR, and UN Women.
- Shaw, Margaret. 2013. 'Too Close to Home: Guns and Intimate Partner Violence.' In Small Arms Survey. *Small Arms Survey 2013: Everyday Dangers*. Cambridge: Cambridge University Press, pp. 16–45.
- Small Arms Survey. n.d. Global Violent Deaths (GDV). Database. Accessed 18 June 2020.
- South Africa. 2019. 'South African Statement to the Fifth Conference of States Parties to the Arms Trade Treaty: 26 August 2019: Thematic Discussion on Gender and Gender-based Violence.'
- Spanish General Council of the Judiciary. n.d. Spanish Observatory on Domestic Violence.
- Stimson Center. n.d. 'Central and Eastern European Training on Gender-based Violence and the Arms Trade Treaty.'
- and IHRC (International Human Rights Clinic). 2021. *The Arms Trade Treaty's Gender-based Violence Risk Assessment: A Questionnaire for Information Sources*. February.
- Switzerland. 2020. *End-use Certificate for War Material for Presentation to the Export Control Authorities of the Swiss Confederation*. State Secretariat for Economic Affairs.
- UNGA (United Nations General Assembly). 1979. Convention on the Elimination of All Forms of Discrimination Against Women. 18 December.
- 2013. Arms Trade Treaty. 'Certified True Copy (XXVI-8).' Adopted 2 April. In force 24 December 2014.
- 2015. *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo*. A/HRC/29/27/Add.1 of 31 March.
- 2019. *Human Rights Situation in the Central African Republic: Report of the Independent Expert on the Situation of Human Rights in the Central African Republic*. A/HRC/42/61 of 9 August.
- 2020. *Detailed Findings of the Independent International Fact-finding Mission on the Bolivarian Republic of Venezuela*. A/HRC/45/CRP.11 of 15 September.
- UNHCHR (UN High Commissioner for Human Rights). 2011. *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity: Report of the United Nations High Commissioner for Human Rights*. A/HRC/19/41 of 17 November.
- UNHCR (United Nations High Commissioner for Refugees). 2011. *Action against Sexual and Gender-based Violence: An Updated Strategy*. Geneva: UNHCR. June.
- UNODC (United Nations Office on Drugs and Crime). 2019. *Global Study on Homicide 2019: Gender-related Killing of Women and Girls*. Vienna: UNODC.
- UNSC (United Nations Security Council). 2018. *Letter Dated 14 December 2018 from the Panel of Experts on the Central African Republic Established Pursuant to Resolution 2399 (2018) Addressed to the President of the Security Council*. S/2018/1119 of 14 December.
- 2019. *Letter Dated 6 August 2019 from the Panel of Experts Established Pursuant to Resolution 2374 (2017) on Mali Addressed to the President of the Security Council*. S/2019/636 of 7 August.
- 2020. *Letter Dated 2 June 2020 from the Group of Experts on the Democratic Republic of the Congo Addressed to the President of the Security Council*. S/2020/482 of 2 June.
- UN Women. 2016. Global Database on Violence against Women.
- n.d. 'Virtual Knowledge Centre to End Violence against Women and Girls.'
- Vestner, Tobias. 2019. *Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade Treaty*. Geneva Paper 23/19. Geneva: Geneva Centre for Security Policy. March.
- WHO (World Health Organization). 2012. 'Understanding and Addressing Violence against Women.' Femicide Information Sheet. WHO/RHR/12.38. Geneva: WHO.
- WILPF (Women's International League for Peace and Freedom). 2013. *Promoting Gender Equality in the Implementation of the UN Arms Trade Treaty*. Geneva: WILPF.
- 2016. *Preventing Gender-based Violence through Arms Control: Tools and Guidelines to Implement the Arms Trade Treaty and UN Programme of Action*. Geneva: WILPF. April.
- 2019. *National and Local Perspectives on Preventing Gender-based Violence through Arms Control: Gender and Armed Violence: A Look at the Situation in Cameroon*. Geneva: WILPF. May.
- 2020. Gender and Disarmament Database.

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The Small Arms Survey is a global centre of excellence whose mandate is to generate impartial, evidence-based, and policy-relevant knowledge on all aspects of small arms and armed violence. It is the principal international source of expertise, information, and analysis on small arms and armed violence issues, and acts as a resource for governments, policymakers, researchers, and civil society. It is located in Geneva, Switzerland, and is an associated programme of the Graduate Institute of International and Development Studies. The Survey has an international staff with expertise in security studies, political science, law, economics, development studies, sociology, and criminology, and collaborates with a network of researchers, partner institutions, non-governmental organizations, and governments in more than 50 countries.

For more information, please visit: www.smallarmssurvey.org.

Contact details

Small Arms Survey
Maison de la Paix
Chemin Eugène-Rigot 2E
1202 Geneva
Switzerland

t +41 22 908 5777


f +41 22 732 2738

e info@smallarmssurvey.org

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